BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Duke Manufacturing Co.,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. TC-2008-0191**
	)	
McLeodUSA Telecommunications Services, Inc.,	)	
	)	
Respondent.	)	

ORDER SETTING PREHEARING CONFERENCE AND DIRECTING FILING OF A PROPOSED PROCEDURAL SCHEDULE

Issue Date: January 29, 2008 Effective Date: January 29, 2008

Duke Manufacturing Co. ("Duke") filed a formal complaint against Respondent McLeodUSA Telecommunications Services, Inc. ("McLeod") on December 11, 2007. Exhibit 1 attached to the complaint lists nearly 100 contacts concerning approximately 15 service issues between Duke and McLeod going back over a two-year period.

On December 14, 2007, the Commission notified McLeod of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). On the same day, the Commission also directed the Staff to investigate this matter and to file a report concerning the results of that investigation no later than one week after McLeod filed its answer. McLeod filed its answer on January 14, 2008. The answer generally denies that McLeod has failed to provide adequate, just, and reasonable services, and asserts that the majority of the chronic service issues identified by Duke in its complaint relate to the condition of several access loops provided by AT&T Missouri.

On January 18, 2008, Staff filed a pleading captioned "Motion to Postpone Filing Report and Motion to Schedule Prehearing Conference." In this pleading, Staff requested that the Commission extend the due date for Staff's report from January 21, 2008 to an unspecified later date, and also requested that the Commission schedule a prehearing conference in this matter, at which time the parties would develop a proposed procedural schedule, including the time for Staff to file testimony on its investigation. The Commission granted those requests by order dated January 29, 2008.[1]

This matter is now at issue and a prehearing conference is appropriate to ensure its prompt resolution. In part, a prehearing conference is designed to permit the parties to pursue settlement discussions and to identify all remaining procedural or substantive matters of concern prior to the formal disposition of the issues in the case.[2] In addition, a prehearing conference offers the parties a valuable opportunity to attempt to resolve their differences by agreeing to voluntary mediation of their dispute. The parties shall jointly file a proposed procedural schedule within twenty days after the prehearing conference.

The Commission reminds the parties that this prehearing conference is *not an evidentiary hearing.* Sworn testimony will not be taken and no final decision will result from this prehearing conference.[3] However, all parties are required to be present for the prehearing conference, and a court reporter will be present to make a record of the parties that appear. **Parties must arrive in person or appear by telephone at or before the scheduled starting time of 10:00 a.m. in order to participate.** Pursuant to Commission Rule 4 CSR 240-2.090(5), "Failure to appear at a prehearing conference without previously

[1] In that order, the Commission advised the parties that the prehearing conference would actually be scheduled in a separate order.
[2] *See* Commission Rule 4 CSR 240-2.090(6).
[3] Also, under Commission Rule 4 CSR 240-2.090(7), any facts the parties may discuss during the conference, including any settlement offers or discussions, are privileged and cannot be used against any participating party unless the parties agree to disclose them or they are fully supported by other, independent evidence.

having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown."

The Commission further advises the parties that arriving late to a prehearing conference is the equivalent of failing to appear. Parties are expected to appear at scheduled hearings on time, or to advise the Commission of their need to appear late or to timely request a continuance. If a party fails to meet those obligations, that party may be dismissed and the Commission may rule in favor of an opposing party. This is why the Commission issues advance notice of all hearings and conferences and extends various opportunities prior to any scheduled event for the parties to appear by phone or request a continuance.

IT IS ORDERED THAT:

1. The parties shall appear at a prehearing conference to be held on February 7, 2008, beginning at 10:00 a.m. The prehearing conference will be held in Room 305 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

2. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than February 4, 2008.

3. Any party wishing to request a continuance shall file a pleading with the Commission stating why they are unable to attend the scheduled prehearing conference on February 7, 2008, either in person or by phone, and shall provide the Commission with a

list of dates when that party is available to appear. Any such pleading shall be filed no later than February 4, 2008, and shall also be served on every other party to this complaint by the party requesting the continuance.

4. The parties shall jointly prepare and file a proposed procedural schedule no later than February 14, 2008. The proposed schedule shall include a due date for Staff's report concerning the results of its investigation of Duke Manufacturing Co.'s formal complaint against McLeodUSA Telecommunications Services, Inc.

5. This order shall become effective on January 29, 2008.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory
Law Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 29th day of January, 2008.